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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES GONZALES,

Defendant and Appellant.

H039836

(Santa Clara County

Super. Ct. No. C9917255)

In 2000, a jury found appellant James Gonzales guilty of two counts of threatening a public official. (Pen. Code § 76, subd. (a)(1)).) The jury also found true two prior strikes and four prison priors. (Pen. Code §§ 667, subds. (b)-(i); 1170.12.) The court sentenced appellant to 25 years to life pursuant to the former “Three Strikes” law.

On May 31, 2013 appellant filed a “Motion for a *Romero* Hearing Pursuant to Penal Code § 1385,” arguing that one strike prior was illegally imposed. On June 5, 2013, the court denied a motion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 as untimely. This timely appeal ensued.

On appeal, we appointed counsel to represent appellant in this court. Appointed counsel filed an opening brief pursuant to *People v. Serrano* (2012) 211 Cal.App.4th 496 (*Serrano*)) which states the case and the facts but raises no specific issues. Pursuant to *Serrano*, on September 16, 2013, we notified defendant of his right to submit written argument in his own behalf within 30 days. On October 7, 2013, we received “Defendant

Appellants [*sic*] Supplemental Brief in Pro-Per.” In his brief appellant argues that one of his prior convictions cannot properly be used as a strike. The validity of the strike prior which forms the basis for his sentence should have been raised in an appeal from the judgment of conviction. This issue is not timely raised on appeal from an untimely post-judgment motion. Nothing in appellant’s letter raises any arguable issues on appeal from the trial court’s order denying appellant’s post judgment motion. Therefore, we decline to retain the appeal.

The appellant having failed to raise any arguable issue on appeal, we dismiss the appeal. (*Serrano, supra*, 211 Cal.App.4th at pp. 503-504.)

DISPOSITION

The appeal is dismissed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.